



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,474	02/14/2001	Stephen H. Friend	9301-129	1718
20583	7590	11/04/2003	EXAMINER	
PENNIE AND EDMONDS 1155 AVENUE OF THE AMERICAS NEW YORK, NY 100362711			MARSCHEL, ARDIN H	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/783,474

Applicant(s)

FRIEND ET AL.

Examiner

Ardin Marschel

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Applicants' arguments, filed 8/4/03, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

VAGUENESS AND INDEFINITENESS

Claims 51-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is reiterated and maintained from the previous office action, mailed 2/4/03. Applicants argue by pointing to various phrases in the claims which contain the interpolation claim limitations but do not argue the basis for this rejection as set forth in the previous office action, mailed 2/4/03, regarding unclarity as to what interpolation practice is meant. None of the pointed to phrases in the claims specify what interpolation is meant but only cite the use of this unclear limitation. Thus, applicants' arguments are not directed to the actual basis for this rejection as set forth previously and therefore is maintained.

PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1631

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 51-53, 56, and 57 are rejected under 35 U.S.C. 102(b) and (e)(2) as being clearly anticipated by Swift et al. (P/N 5,464,742) or, alternatively, under 35 U.S.C. 102(e)(2) by Anderson et al. (P/N 6,267,722).

This rejection is reiterated and maintained from the previous office action, mailed 2/4/03. Applicants argue confusingly firstly by listing canceled claims on page 9 of the REMARKS, filed 8/4/03. This apparently is a typographical error. The above claims listed above are assumed to be those argued by applicants regarding these prior art based rejections. Applicants then argue that Swift et al. lacks disclosure of interpolating between levels of cellular constituents as instantly claimed. In response applicants have not defined what is meant regarding their interpolating practice as to metes and bounds as noted in the above rejection under 35 U.S.C. 112, second paragraph. Thus, the previously pointed to curve fitting of data in statistical methods being characterized as being for comparing profiles of cellular constituents is reasonably interpreted as an interpolation practice. Such comparing of response profiles as being interpolation were also confusingly argued in REMARKS, filed 8/4/03, within phrases to define what interpolation is in response to the above reiterated rejection under 35 U.S.C. 112, second paragraph. See citation from instant claim 51 is said arguments regarding 35 U.S.C. 112, second paragraph. Applicants then argue that the 95% confidence level in

Swift et al. is determined in the statistical analysis of a population of test individuals rather than a statistical significance of similarity between a diagnostic and interpolated profile. In response, the curve fitting as part of the profile comparison is part of said statistical analysis and therefore does, in fact, incorporate the comparison as being interpolated in such curve fitting practice. It is acknowledged that the specific word "interpolated" is not cited in Swift et al., but that there is no distinction that has been argued or seen between the statistical analysis and curve fitting of Swift et al. and the instantly claimed interpolation practice.

Similarly, applicants have argued that Anderson et al. does not cite or utilize interpolation of profiles as instantly claimed. Equivalent to the response above regarding this argument no distinction has been instantly defined or even argued that specifies what the metes and bounds of interpolation are in the instant claims such that data analysis and/or curve fitting as in the reference for comparing response profiles is not included as an interpolation practice as instantly claimed. Also, the 95% confidence level is included in the instant claim practice regarding its usage in Anderson et al. for the same reasons as noted above for Swift et al. that it is utilized in analysis of curve fitting which is within a reasonably interpreted interpolation practice as instantly claimed.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1631

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

No claim is allowed.

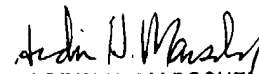
Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

October 31, 2003


ARDIN H. MARSCHEL
TECHNICAL CENTER 1600